IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

First Appeal No. 35 of 2006

Swami Ramanand Satyarthi Trust Rajyog Mandir,
Raghuvarpura No. 2 Gandhi Nagar,
Delhi 31 through Swami Keshwanand Satyarthi
President represented by his power of attorney
Sri Manoj Sharma, S/o Sri Khairati Lal Sharma
R/o Rajyog Mandir, Shanti Mohalla,
Gandhi Nagar, Delhi – 110 031.

…….. Plaintiff / Appellant

Versus

General public

…..…… Defendant / Respondent

Mr. Pankaj Miglani, learned counsel for the appellant.
None for the respondent.

Hon'ble Prafulla C. Pant, J.

Heard learned counsel for the plaintiff / appellant.

2) This appeal is preferred against the judgment and decree dated 30.03.2006, passed in a suit instituted by the plaintiff / appellant under Section 92 of the Code of Civil Procedure, 1908 (hereinafter referred as the Code) for permission to transfer a piece of land belonging to Swami Ramanand Satyarthi Trust (appellant).

3) Brief facts of the case are that, an application under Section 92 of the Code (registered as Misc. Case No. 24 of 2004) was filed earlier for filing the suit on behalf of the Trust for permission to file suit on behalf of the Trust for

sale of property of the Trust. Said application, after hearing, was allowed on 10th August, 2005, by the then learned District Judge, Haridwar. Thereafter, a suit No. 03 of 2005 was entertained by the trial court in which it was pleaded that the plaintiff is a registered charitable Trust and Swami Keshwanand Satyarthi is the Chairman of the Trust. On 05.09.2004, a meeting was convened by the trustees wherein it was resolved that the land measuring 299.93 sq. mt. of plot Nos. 25 and 26, owned by the Trust, situated within the limits of Nagar Palika, Haridwar, be sold so that a bigger plot may be purchased for the Trust near G.D. Enclave, Bhupatwala, Haridwar, which is more useful for the public at large, who are the beneficiaries of the Trust. As per the plaint case, a bigger plot was required by the Trust for constructing a building of the Trust, over it.

4) From the record, it appears that notices under Order I Rule 8 of the Code were published in a newspaper and no one from the general public objected to the relief claimed by the Trust. (It is pertinent to mention here that notices were published in the newspapers from this Court also, but no objection against the relief claimed by the Trust, has been filed from amongst the general public). The trial court, after hearing the parties, dismissed the suit (which is wrongly mentioned as Misc. Case) on the ground that it is not clarified that how the property sought to be sold is not useful and how the property sought to be purchased will be for the Trust. On perusal of the affidavit of Swami Keshwanand Satyarthi, Chairman of the Trust, the purposes has been explained as to why the necessity arose to sell the property (plot Nos. 25 and 26) of the Trust and why the

plot in Bhupatwala is required for the Trust. The affidavit of Swami Keshwanand Satyarthi, through whom the suit has been filed, clarifies the purposes in para Nos. 4 and 5 the affidavit, which reads as under:

1- ^^ikFkhZ @ Lokeh jkekuUn lR;kFkhZ VªLV ,d jftLVMZ VªLV gS ftldh VªLV MhM fnukad 28-09-1971 lc0 jft0 fnYyh esa jftLVªh’ku u0 14771 @ 458 pyh vkrh gSA

2 ;g fd ikFkhZ @ VªLV ,d jftLVMZ VªLV esa uhfgr mnns’;ksa dk vke tu dh fgrkFk VªLV MhM esa fn;k x;k mnns’;ksa dk ijk djrh gS ftld v/;{k Lokeh d’kokuUn lR;kFkhZ VªLV v/;{k gS ftUgsa lHkh izdkj dh dkuuh dk;Zokgh dju dk ,o VªLV lapkyu dk vf/kdkj ikIr gS Lokeh d’kokuUn lR;kFkhZ dh vkj ls okn mijkDr ekU; U;k;ky; esa nkf[ky fd;k tk jgk gS tks vf/kd`r gSA

3- ;g fd ikFkhZ @ VªLV dk gfj}kj fLFkr vpy lEifRr gS ftldk lykV u0 25 dk 1@2 Hkkx lykV u0 25 dk Hkkx ftldh izekb’k ehVj] if’pe 21-64 ehVj] mRrj 13-06 ehVj] nf{k.k 13-86 ehVj vkj {k=Qy 299-93 ehVj [kljk uEcj 62@5@1 feuheyk vUnj lhek uxjikfydk lfefr gfj}kj fLFkr xkdyh fcgkj vkoklh dykuh xkeZ Hkkirokyk dyk] ijxuk Tokykiqj rglhy o ftyk gfj}kj ftld izo esa tEeh okyh Hkou] if’pe lykV u0 27] mRrj jkLrk 7-50 EkhVj] nf{k.k ve`r xqxk vikVZeUV Fk mDr Hkfe esjs }kjk fod;] i= rk0 o izek0 rk0 7-8-98 ftldh jft0 cgh u0 1 ft0 1045@1122] i0 345@348 u0 3162 ij dk;kZy; vij gfj}kj gSA FkhA xhrk tqyh ,sfl,V }kjk fd’kuyky

'keh i= Jh xUnkjke 'keh o vkeidk'k 'keh i= Jh j.kthr 'keh nkuk ikVuj mDr Qe l [kjhn dh gbZ g mDr Hkfe gfj}kj fodkl ikf/kdj.k gfj}kj l Lohdr dkykuh gA ftl vkx i'uxr lEifRr dgk x;k gA

4 ;g fd mijkDr VªLV @ ikFkh dk ,d cBd fnukd 5-9-2004 dk VªLV d v/;{k Lokeh d'kokuUn lR;kFkh th egkjkt dh v/;{krk e lHkh VªLVh;k dh mifLFkfr e mijkDr ir ij gbZ ftle lo lEefr l ;g iLrko ikl gvk fd i'uxr lEifRr fuEuof.kr dk cpdj cMk lykV ikFkh VªLV d uke l foxr fLFkr th0 Mh0 ,Udyo] HkiRokyk gfj}kj e VªLV d uke l [kjhn fy;k tk;A mDr i'uxr lEifRr fuEufyf[kr dk fod; dju dk rFkk cMk lykV [kjhnu dk vf/kdkj Lokeh d'kokuUn lR;kFkh th egkjkt dk vf/kd'r fd;k x;k ftl gr VªLV dh vkj l ekU; U;k;ky; mijkDr u mijkDr xjt dk ikFkuki= iLr djd ekU; U;k;ky; l lohdfr yu dh dk;okgh djd fod; vkfn dju dk leLr vf/kdkj Lokeh d'okuUn th egkjkt dk ikIr gvk gA

5 ;g fd oknh@ VªLV i'uxr lEifRr fuEuof.kr dk viuh VªLV d u;s fuek.k/khu Hkou dk cuku gr LFkku de ikrh g D;kfd i'uxr lEifRr yxHkx 300 oxehVj LFkku dh g ftle VªLV dk Hkou NkVk cuxk tcfd VªLV d vu;k;h tk gfj}kj fLFkr egku rhFk e vk;x mudh l[;k T;knk g bl dkj.k l i'uxr lEifRr fuEuof.kr dk fod; djd gfj}kj e gh VªLV d uke l cM vkdkj dk lykV [kjhn dj cuk;k tk;xkA mDr xjt dh vko';drk gr ekU; U;k;ky; mijkDr l i'uxr lEifRr fuEuof.kr dk fod;

gr vuefr ikIr gkuh U;k;fgr e vko';d ,o ikFkuh; gA

6- ;g fd ikFkh @VªLV i:'uxr lEifRr fuEuof.kr dk fod:; djd VªLV d uke l gfj}kj e gh cMk lykV d:; dj xkA fod:; fd;: x;: lykV dk tk /ku ikIr gkxk mldk vU; dkb: n:i;kx ugh dj xkA

7 ;g fd i:'uxr lEifRr fuEuof.kr dk fod:; o u;k lykV VªLV }kjk [kjhnuk tk gfj}kj e gh lEHko gkuk g ftl dkj.k l ekU; U;k;ky; mijkDr okn d Jo.k rFkk fuLrkj.k dk gd gkfly gA

8 ;g fd ikFkh VªLV l lHkh VªLVh;k dh mijkDr xjt o lgefr VªLV d v/;{k d:'kokuUn lR;kFkh d gd e ikIr gvk g vU; fdlh Hkh VªLVh dk o vU; 0;fDr dk i:'uxr lEifRr d fod:; gr dkb: vkifr ugh gA

9 ;g fd i:'uxr lEifRr fuEuof.kr fdlh Hkh fdLe dk dkb: okn fookn fdlh Hkh U;k;ky; e fopkjk/khu ugh g rFkk mDr xjt d f[kykQ fdlh Hkh i:dkj dk dkb: vkn:'k Hkh U;k;ky; dk ikfjr ugh g i:'uxr lEifRr fuEu ikd &lkQ gA

10 ;g fd okn mijkDr d lkFk fu;r U;k;'kYd vnk fd;k tkrk gA

11 vr% Jheku th l ikFkuk g fd mijkDr rF;k dk nf"Vxr j[kr g, rFkk lyXu ikFkuk i- o 'kiFk i= d vk/kkj ij i:'uxr lEifRr fuEuof.kr dk fod:; fd;: tku gr ikFkh VªLV dk vuefr inku dju dk vkn:'k U;k;fgr e ikfjr dju dh d:ik djA Jhekuth dh vfr d:ik gkxhA**

5) In view of aforesaid evidence on record, the finding of the learned trial court, appears to be erroneous. After going through the affidavit filed in evidence on record (as no one has objected to the petition) and the purpose of sale and purchase appears to be in the interest of Trust and the general public, the suit should have been decreed for the relief claimed by the Trust.

6) Accordingly, the appeal deserves to be allowed. The same is allowed. The impugned judgment and decree is set aside. The Original Suit No. 03 of 2005 is decreed. Permission is granted to sell the property, owned by the Trust, and in turn purchase another property as prayed. (All pending misc. applications in this appeal automatically stand disposed of).

(Prafulla C. Pant, J.)

Dt: 23rd August, 2006.
H.Negi